

**MINUTES OF THE MEETING OF THE
UNIFORM COMMERCIAL CODE COMMITTEE
OF THE STATE BAR OF CALIFORNIA**

June 9, 2004
9:30 a.m. to approximately 11:30 a.m.
In Person Conference Meeting at
Holiday Inn (Oakland Airport)

The June 9, 2004 meeting of the Uniform Commercial Code Committee (the "Committee") was called to order at approximately 9:30 a.m. with Andrew Erskine and Pauline Stevens presiding. Pauline Stevens was present on the telephone via conference call as were several other members.

A. Administrative Matters. Appointment of Secretary. Sandy Shippey was appointed as the secretary for the meeting.

2. Approval of April 8, 2004 and May 13, 2004 Meeting Minutes. The minutes of the April 8, 2004 and May 13, 2004 meetings were presented in the form disseminated prior to the meeting and were approved.

3. Future Meeting Dates/Locations. The Committee reconfirmed and established future meeting dates as follows:

July 7, 2004 (Wednesday), Videoconference, 9:30 a.m. at the offices of Morrison & Foerster in Los Angeles, San Francisco, Palo Alto and San Diego. At that meeting, the Committee will decide whether to have an August meeting and if so, the date, time and place.

September 8, 2004 (Wednesday), Videoconference, 9:30 a.m. was tentatively scheduled, but the location is still to be determined.

B. Review of Proposed New Committee Membership. Vasco Morais reported that the slate of new Committee members would be submitted to the Executive Committee for approval at the Executive Committee's June 18, 2004 meeting. There have been no changes from the slate approved at the May 13, 2004 Committee meeting.

C. Report of the Article 2/2A Subcommittee. Paul Barkes reported on the status of the Article 2/2A Subcommittee. Mr. Barkes had previously reported that there are numerous problems with Articles 2 and 2A, and the Article 2/2A Subcommittee would prefer to fix these problems through NCCUSL to avoid California nonuniformity. Mr. Barkes said the Article 2/2A Subcommittee prepared a memorandum and it was sent to the Editorial Board of NCCUSL for their consideration and although he has left messages, he has not had any reply from the Editorial Board of NCCUSL.. Mr. Barkes reported that he is still waiting for some revisions to the Article 2/2A Subcommittee report from some of the subcommittee members. There was some discussion about "e-blasting" the report to the UCC Committee constituency list and/or posting

the report on the UCC Committee website, but that this action will not be taken until it is discussed with Harry Sigman.

D. Report of the Opinion Subcommittee. Mr. Szurley reported that the Opinions Committee of the Business Law Section has provided comments to the UCC Committee Opinions Subcommittee. He described three main substantive comments received:

1. The report should provide sample language and customary language rather than “recommended” forms of opinion, the point being that the UCC Committee Opinions Subcommittee report should not be so prescriptive.

2. The readability of the report needs to be improved and although there are different interpretations of readability, but some changes will result from this comment.

3. The Opinions Committee of the Business Law Section has commented that the form of opinions in the UCC Committee Opinions Subcommittee report are somewhat different than in the Tri-Bar report and not necessarily consistent with customary opinion practice in California. He acknowledged that the report was intended, at least in part, to be a guide for California practitioners and the language of many of the opinions tracks more closely with the language of Revised Article 9. Mr. Szurley reported that some of the opinions may be changed to be more in line with customary opinion practice in California and that some of the proposed recommended opinion language would likely be moved to footnotes.

Mr. Szurley then reported that Pam Martinson, Peter Szurley and Andy Hirsch will be redrafting certain sections of the report and will submit it to a subgroup of the Opinions Committee of the Business Law Section. Then, the subgroup of the Opinions Committee of the Business Law Section will provide detailed comments to the report.

E. Report of Hidden Lien Subcommittee. No one from the Hidden Lien Subcommittee was in attendance at the meeting. Andy Erskine will follow up on the status of the work being performed by the Hidden Lien Subcommittee with Bob Anderson.

F. Report on Recent Developments Relating to Revised Article 1. Mr. Szurley reported that Revised Article 1 is dead in California for 2004 primarily because the California Bankers Association (“CBA”) was unwilling to support Section 1301 pertaining to choice of law. Mr. Szurley reported that CBA’s opposition was primarily because (1) CBA did not want to introduce the concept of “consumer” in the UCC, and (2) Section 1301(f) did not follow Restatement Section 187 so Section 1301 would not be a codification of current California law and would amount to a change of California law.

G. Report on Website Review and Development Project. Vasco Morais reported that an updated survey page showing state offices with online availability has been added to the UCC Committee website. He further reported that he has requested a meeting of the Website subcommittee to address (1) adding a “news from the UCC Committee” page, (2) adding a web access counter tool, (3) bringing the website to a higher level so that its content could be easier to find by the search engines which would also mean shorter URL’s; (4) whether it will be possible for the UCC Committee to post its items directly to the website rather than going through the State Bar’s webmaster; (5) adding the UCC Committee’s “mission statement” to the website.

H. Report of Legislature Subcommittee. Mr. Szurley reported that an amendment to Section 25118 which would amend an important recently enacted usury exemption was not discovered by the Corporations Committee or the UCC Committee until it had already been approved by the Senate. He indicated that the Executive Committee of the Business Law Section has set up a separate legislative subcommittee to follow legislation. Mr. Erskine reported that a review was ongoing into the search logic and procedures used by the UCC Committee and how to improve the search logic and procedures. Mr. Erskine said he would discuss the issues with Marty Opich and would provide a report regarding the problems and proposed solutions at the next UCC Committee meeting.Programs Report.

1. BLS Spring Meeting Report. Vasco Morais reported that many people attended the Open Meeting and over 20 people attended the later program regarding the new California Online filing systems.

2. BLS Annual Meeting Report. Discussion regarding this meeting and the presentation was deferred because neither Bob Anderson nor Dena Cruz were in attendance at this meeting.

3. Joint Presentation with International Law Section on Electronic Funds Transfers. Arnold Rosenberg reported that there have been no new developments. Paul Turner and Arnold Rosenberg will be co-presenters at this event.

J. Publications Reports. Andy Erskine reported that he has not made progress on the article on consumer deposit accounts since the previous meeting due to his recent marriage and honeymoon. Peter Szurley reported that David Thill has completed an article on the enforceability of jury trial waivers in California and it will be published in the next Business Law News which should be out soon. Therefore, the publication obligation for the UCC Committee has been met for this year. Vasco Morais reported that his article regarding on-line filing is still in process. He is obtaining additional information from Kathleen Vasquez and the developer of the new California system for use in the article. Mr. Rosenberg reported that he has written a book review on a book regarding Bank Collections and Transactions which compares the UCC and non-UCC law in this area. It has been accepted for publication at Wayne State. It was suggested that a summary could be submitted to the Business Law News.

K. Discussion Regarding Restructuring of UCC Committee and its Subcommittees.

1. Continuing Legal Education. Vasco Morais reported on information he obtained at the Business Law Section Leadership Retreat and the Business Law Section's desire for the standing committees to provide continuing legal education programs. He suggested that the UCC Committee could leverage off existing programs and articles to prepare the content for continuing legal education materials. The UCC Committee decided that a new subcommittee was not needed, but that continuing legal education would be a focus of the Programs and Publications subcommittee with one member of that subcommittee tasked to focus on coordinating continuing legal education activities for the UCC Committee. Mr. Morais discussed the various types of continuing legal education programs that could be offered according to Susan Orloff of the Business Law Section including (a) articles in the Business Law News with questions and answers that could be graded for CLE credit for a fee, (b) articles

posted to the UCC Committee website with questions and answers that could be graded for CLE credit for a fee, (c) teleconferences, and (d) videoconferences. It was suggested that perhaps the Programs and Publications subcommittee might need new members once the new members arrive in the fall. Mr. Morais said he would discuss these suggestions with Konrad Schreier.

2. New Subcommittee to Research Foreign Filing Systems. Pauline Stevens suggested that a new subcommittee be formed to research which foreign filing systems satisfy the requirements of Revised Article 9. After some discussion about coordinating the research efforts with the ABA or others who might also be working on similar research, a new Foreign Filing Systems subcommittee was approved. Arnold Rosenberg and Vasco Morais agreed to participate on the subcommittee and it is anticipated that new members who will join the UCC Committee in the fall will also participate on this new subcommittee.

3. Co-Secretaries. Sandy Shippey made the suggestion that the UCC Committee appoint one or more people to act as Co-Secretaries to avoid the wasted time in each minute appointing a special secretary for each meeting to take the minutes. It is anticipated that two Co-Secretaries would be appointed and would share responsible for the following tasks:

- (a) Taking roll call at each meeting and keeping records of attendance;
- (b) Taking notes at each meeting and preparing the minutes for each meeting;
- (c) Preparing and keeping track of items for the UCC Committee calendar;
- (d) Keeping current the master list of the names and contact information of all UCC Committee members and advisors and making sure that the Executive Committee receives notification if there are any changes to the names and contact information for any UCC Committee members or advisors;
- (e) Keeping and updating the subcommittee lists; and
- (f) Collecting and sending out all materials to all UCC Committee members and advisors including, without limitation, the Agenda prepared by the Co-Chairs and Co-Vice Chairs, in advance of each UCC Committee meeting.

4. Guidelines for Participation on the UCC Committee. Vasco Morais suggested that guidelines for each member's expected participation in the UCC Committee be determined and at the first meeting of each year with the new UCC Committee members, these guidelines will be described for all new UCC Committee members. After some discussion, the following are the guidelines were approved by the UCC Committee with respect to each member's expected participation in the UCC Committee:

- (a) Attendance at all meetings if possible, but 2 excused absences per year would be accepted;
- (b) Participation on one substantive subcommittee; and

(c) Spending an average of 6-8 hours per month on UCC Committee and subcommittee matters.

L. Other.ALI and NCCUSL Developments. Bob Slattery reported that the standing UCC Committee of ALI has issued commentary regarding Federal Reserve Regulation “CC” with respect to electronic funds availability. Arnold Rosenberg suggested that the Article 3/4 subcommittee could review this issue. He will have himself placed on the distribution list for the standing UCC Committee of ALI to keep apprised of the situation as it develops. It was agreed that the scope of this committee’s responsibility would include monitoring of ABA developments as well and perhaps additional members would be added to this subcommittee in the fall with some of the new UCC Committee members.

2. California UCC On-Line Filing System. Vasco Morais reported that the California online UCC filing system was ready to be beta tested and that copies of the beta test software was going to be distributed to the stakeholders including the UCC Committee to review. He also reported that the roll-out date has been pushed back to sometime after the end of June because the administrative rules have not yet been approved as required before the roll-out of the new system.

3. UCC Committee 2003-2004 Calendar. It was agreed by the UCC Committee that the old months would not continue to be distributed, the fall meeting would be added, the calendar for all of the next year would be added.

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The meeting was adjourned at approximately 11:30 a.m.